

House Bill 736 (AS PASSED HOUSE AND SENATE)

By: Representative Smith of the 113th

A BILL TO BE ENTITLED
AN ACT

To amend an Act creating a new charter for the City of Winterville (formerly Town of Winterville), approved March 4, 1955 (Ga. L. 1955, p. 2794), as amended, particularly by an Act approved March 24, 1994 (Ga. L. 1994, p. 3753) and an Act approved January 13, 1983 (Ga. L. 1983, p. 3707), so as to change provisions relating to vacancies; to provide for changes to boards, commissions, and authorities; to provide for changes to the chief judge and associate judge of the municipal court; to provide for the convening of municipal court; to provide for certiorari; to provide for rules of court; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

An Act creating a new charter for the City of Winterville (formerly Town of Winterville), approved March 4, 1955 (Ga. L. 1955, p. 2794), as amended, particularly by an Act approved March 24, 1994 (Ga. L. 1994, p. 3753) and an Act approved January 13, 1983 (Ga. L. 1983, p. 3707), is amended by revising Section 10 as follows:

"Section 10. Vacancy; Filling of Vacancies.

(a) Vacancies. The office of mayor or councilmember shall become vacant upon such person's failing or ceasing to reside in the city or upon the occurrence of any event specified by the Constitution of the State of Georgia, Title 45 of the Official Code of Georgia Annotated, or such other applicable laws as are or may hereafter be enacted.

(b) Filling of Vacancies. A vacancy in the office of mayor or councilmember shall be filled for the remainder of the unexpired term, if any, by appointment by the mayor or mayor pro tem with approval of the council if less than 12 months remains in the unexpired term, otherwise, such vacancy shall be filled by an election and in accordance with Titles 21 and 45 of the Official Code of Georgia Annotated, or other such laws as are or may hereafter be enacted."

SECTION 2.

Said Act is further amended by revising Sections 20 through 24.1 as follows:

"Section 20. Creation; Name.

There shall be a court to be known as the Municipal Court of the City of Winterville.

Section 21. Chief Judge; Associate Judge.

(a) The municipal court shall be presided over by a chief judge and such part-time, full-time, or standby judge as shall be provided by ordinance.

(b) No person shall be qualified or eligible to serve as a judge on the municipal court unless he or she shall have attained the age of 21 years, shall be a member of the State Bar of Georgia, and shall possess all qualification required by law. All judges shall be appointed by the mayor and approved by the city council and shall serve until a successor is appointed and qualified.

(c) Compensation of the judge or judges shall be fixed by the city council by ordinance.

(d) Judges serve at will and may be removed from office at any time by a majority vote of the city council unless otherwise provided by ordinance.

(e) Before assuming office, each judge shall take an oath, given by the mayor, that he or she will honestly and faithfully discharge the duties of his or her office to the best of his or her ability and without fear, favor, or partiality. The oath shall be entered upon the minutes of the city council journal.

Section 22. Convening.

The municipal court shall be convened at regular intervals as provided by ordinance.

Section 23. Jurisdiction; Powers.

(a) The municipal court shall try and punish violations of this charter, all city ordinances, and such other violations as provided by law.

(b) The municipal court shall have authority to punish those in its presence for contempt, provided that such punishment shall not exceed \$200.00 or ten days in jail.

(c) The municipal court may fix punishment for offenses within its jurisdiction not exceeding a fine of \$1,000.00 or imprisonment for not more than six months or both or may fix punishment by fine, imprisonment, or alternative sentencing as now or hereafter provided by law.

(d) The municipal court shall have authority to establish a schedule of fees to defray the cost of operation and shall be entitled to reimbursement of the cost of meals, transportation, and caretaking of prisoners bound over to superior courts for violations of state law.

(e) The municipal court shall have authority to establish bail and recognizances to ensure the presence of those charged with violations before said court and shall have discretionary authority to accept cash or personal or real property as surety for the appearance of persons charged with violations. Whenever any person gives bail for his or her appearance and fails to appear at the time fixed for trial, his or her bond shall be forfeited to the judge presiding at such time, and an execution shall be issued thereon by serving the defendant and his or her sureties with a rule nisi, at least two days before a hearing on the rule nisi. In the event that cash or property is accepted in lieu of bond for security for the appearance of a defendant at trial, and if such defendant fails to appear at the time and place fixed for trial, the cash so deposited shall be on order of the judge declared forfeited to the city, or the property so deposited shall have a lien against it for the value forfeited, which lien shall be enforceable in the same manner and to the same extent as a lien for city property taxes.

(f) The municipal court shall have the same authority as superior courts to compel the production of evidence in the possession of any party; to enforce obedience to its orders, judgments, and sentences; and to administer such oaths as are necessary.

(g) The municipal court may compel the presence of all parties necessary to a proper disposal of each case by the issuance of summonses, subpoenas, and warrants which may be served as executed by any officer as authorized by this charter or by law.

(h) Each judge of the municipal court shall be authorized to issue warrants for the arrest of persons charged with offenses against any ordinance of the city, and each judge of the municipal court shall have the same authority as a magistrate of the state to issue warrants for offenses against state laws committed within the city.

Section 24. Certiorari.

The right of certiorari from the decision and judgment of the municipal court shall exist in all criminal cases and ordinance violations cases, and such certiorari shall be obtained under the sanction of a judge of the Superior Court of Clarke County under the laws of the State of Georgia regulating the granting and issuance of writs of certiorari.

Section. 24.1. Rules of Court.

With the approval of the city council, the judge shall have full power and authority to make reasonable rules and regulations necessary and proper to secure the efficient and successful administration of the municipal court; provided, however, that the city council may adopt in part or in toto the rules and regulations applicable to municipal courts. The rules and regulations made or adopted shall be filed with the city clerk, shall be available for public inspection, and, upon request, a copy shall be furnished to all defendants in municipal court proceeding at least 48 hours prior to said proceedings."

SECTION 3.

Said Act is further amended by revising Section 26.1 as follows:

"Section 26.1. Boards, Commissions, and Authorities.

(a) The city council shall create by ordinance such boards, commissions, and authorities to fulfill any investigative, quasi-judicial, or quasi-legislative function the city council deems necessary and shall establish by ordinance the composition, period of existence, duties, and powers thereof.

(b) All members of boards, commissions, and authorities of the city shall be appointed by the mayor with the approval of the city council for such terms of office and in such manner as shall be provided by ordinance, except where other appointing authority, terms of office, or manner of appointment is prescribed by this charter or by law.

(c) The city council may provide by ordinance for the compensation and reimbursement for actual and necessary expenses of the members of any board, commission, or authority.

(d) Except as otherwise provided by charter or by law, no member of any board, commission, or authority shall hold any elective office in the city.

(e) Any vacancy on a board, commission, or authority of the city shall be filled for the unexpired term in the manner prescribed herein for the original appointment, except as otherwise provided by this charter or by law.

(f) No member of a board, commission, or authority shall assume office until he or she has executed and filed with the clerk of the city an oath obligating himself or herself to faithfully and impartially perform the duties of his or her office, such oath to be prescribed by ordinance and administered by the mayor.

(g) All board members serve at will and may be removed at any time by a majority vote of the members of the city council present unless otherwise provided by law.

(h) Except as otherwise provided by this charter or by law, each board, commission, or authority of the city shall elect one of its members as chairperson and one member as vice chairperson, and may elect as its secretary one of its own members or may appoint as secretary an employee of the city. Each board, commission, or authority of the city government may establish bylaws, rules, and regulations, not inconsistent with this charter, ordinances of the city, or law, as it deems appropriate and necessary for the fulfillment of its duties or the conduct of its affairs. Copies of such bylaws, rules, and regulations shall be filed with the clerk of the city."

SECTION 4.

This Act shall become effective on the first day of the month following the month in which it is approved by the Governor or in which it becomes law without such approval.

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- SECTION 5.**
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- All laws and parts of laws in conflict with this Act are repealed.